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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 458

BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, and C. O. CARNAHAN, General Chairman, Brotherhood of Railroad Trainmen,
Petitioners,

v.

SIMON L. HOWARD, SR., and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Corporation,
Respondents.

Brief of Respondent Simon L. Howard, Sr., In Opposition To Petition For Writ of Certiorari

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In The

Supreme Court of the United States

October Term, 1951

No. 458

Brotherhood of Railroad Trainmen, an Unincorporated Association, and C. O. Carnahan, General Chairman, Brotherhood of Railroad Trainmen,

Petitioners,

v.

Simon L. Howard, Sr., and St. Louis-San Francisco Railway Company, a Corporation,

Respondents.

Brief of Respondent Simon L. Howard, Sr., In Opposition To Petition For Writ of Certiorari

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PRELIMINARY STATEMENT

Respondent, Simon L. Howard, Sr., files this brief in opposition to the granting of the Writ of Certiorari because there are not present in this case the special and important reasons that warrant the granting of the Writ.

OPINIONS BELOW

The opinion of the District Court (R. 267) is reported in 72 F. Supp. 695 and that of the Court of Appeals for the Eighth Circuit (R. 339) is reported in 191 F. (2d) 442.

JURISDICTION

The jurisdiction of this Court under Title 28 U. S. C., Section 1254(1) is conceded.

QUESTIONS INVOLVED

1. Whether in a suit brought to enforce rights granted by the Railway Labor Act and the United States Constitution the Court below exceeded its jurisdiction by declaring the *legal effect* of an agreement between a railroad company and a representative under the Railway Labor Act of a craft or class of employees, and in enjoining the parties from using the agreement to violate respondent's statutory rights.

2. Whether the injunction ordered by the Circuit Court of Appeals violates the Norris-LaGuardia Act.[1]

STATUTES INVOLVED

Statutes involved are the Railway Labor Act, 48 Stat. 1185, 45 U. S. C., Sections 151, et seq., and the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Section 101.

STATEMENT OF THE CASE

This is a class suit filed on March 29, 1946, by a Negro passenger brakeman (designated by his employer, St. Louis-San Francisco Railway Company[2] as "train porter"), on behalf of himself and all others similarly situated, against the "Frisco" and petitioners, Brotherhood of Railroad Trainmen,[3] the collective bargaining representative of the craft or class of brakemen on the "Frisco", and C. O. Carnahan, General Chairman of the BRT on the "Frisco" lines.

In the complaint, respondent sought injunctions restraining the "Frisco" and the BRT from abolishing the "train porters" jobs and from hiring white "brakemen" to replace them pursuant to an agreement, dated March 7, 1946, between the "Frisco" and the BRT; a declaratory judgment

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[1] The petitioners (who did not appeal below, or file a motion for rehearing before the Appellate Court) raised the question of the Norris-LaGuardia Act for the first time in its petition before this Court.

[2] (Hereinafter called the "Frisco.")

[3] (Hereinafter called the BRT.)

that the said agreement was null and void and that a notice served by the "Frisco" on the "train porters" discontinuing their jobs and functions was inadequate and in violation of the Railway Labor Act, as amended, 45 U. S. C., Section 156. The District Court held, after a hearing on the merits, that the notices given the "train porters" were in violation of Sections 2-Seventh and 6 of the Railway Labor Act and enjoined the "Frisco" from abolishing the positions of respondent and his class under the notices that had been issued, and held further that it was without jurisdiction to determine the other issues involved in the case. Cross-appeals were taken to the Court of Appeals, 8th Circuit, by the respondents where the case was twice briefed and twice argued. On September 11, 1951, the Court in an unanimous opinion[4] affirmed the decree of the trial Court with respect to the invalidity of the notices and in all other respects reversed the decree, and remanded the cause with directions to enter an injunction as set out in its Opinion.

STATEMENT OF THE FACTS

In their eagerness to persuade this Court that the Court of Appeals had no jurisdiction to decide this cause, petitioners have presented an incomplete statement which gives a distorted picture of controlling facts. Inasmuch as the Court of Appeals was careful to point out (191 F. (2d) l.c. 449) that its disposition of the cause on its merits was based on *"the particular facts and their analysis, with the legal situation resulting therefrom"*, we shall restate the dominant facts as presented below.

At the trial, evidence was introduced that established:

Respondent is a Negro (R. 268) employed by the Frisco to perform the duties of head-end brakemen on passenger trains as well as the duties of "train porter" on said passenger trains. He spends 95% of his working time performing

[4] No opinion had been rendered on the first submission which was set aside some sixteen months later.

his head-end braking duties and the remaining 5% performing the duties of "train porter" (R. 20, 134-5). The only employees performing head-end brakemen's work, who are designated "train porters", are respondent and his class—all Negroes. (R. 284). They have been performing this work for more than 40 years. White employees performing head-end braking work on passenger trains are designated "brakemen", and are not required to perform all the duties of "train porter" (R. 284). Negroes performing head-end braking work are paid sub-standard wages, although they are required to perform the portering work as well (R. 42, 284). White men performing head-end braking work are paid considerably more for doing somewhat less work.

The BRT is the representative under the Railway Labor Act of the entire craft or class of brakeman employed on the "Frisco", but Negroes are excluded from membership in the BRT (R. 283), and excluded from employment as rear-end brakemen or flagmen (R. 98, 103).

For many years, the BRT has been claiming the head-end braking work performed by plaintiff and his class exclusively for white "brakemen" (R. 70, 286). As a matter of fact, the four operating Brotherhoods (Brotherhood of Railroad Trainmen, Order of Railway Conductors, Brotherhood of Locomotive Engineers, and Brotherhood of Locomotive Firemen & Enginemen) have for many years sought to eliminate the use of Negroes by the "Frisco" in train, engine and yard services. Their efforts culminated in an agreement March 14, 1928, whereby the carrier agreed that, *"in the future hiring of employees in train, engine and yard service but not including train porters, only white men shall be employed"* (R. 59, 60, 286). *In the same agreement, the four operating Brotherhoods,* including the BRT, recognized the right of Negroes then in service to the positions they were entitled to under schedule rules *and undertook to protect them from unfair action by any union* members aimed at

compelling them to abandon their positions or their elimination from employment (R. 60, 269).

But, despite the agreement of March 14, 1928, the BRT sought for many years to secure the braking jobs of the Negroes.

The evidence showed that the term "train porter" was merely a racial badge applying only to Negro passenger brakemen (R. 61, 97-99).

In World War I, while the railroads were under the control of the United States Government, the Director-General of the Railroads by Supplement 12 to General Order No. 27, changed the name of the position held by respondent and his class from "train porter" to "passenger brakeman", and thereafter, during Government control, respondent and his class were known as "brakemen" and paid as such the same as white men, although no change was made in their duties (R. 23, 141, 233, 284, 285).

During that period, BRT demanded that all *Negro workers* on passenger trains *receiving brakeman's pay should be on the same* seniority list with other brakemen, and that positions be assigned in accordance with seniority (R. 97, 99, 100), but manifested racial hostility in other ways.

However, when the railroads were returned to private management, on February 1, 1921, the "Frisco," by unilateral action and over the protest of the Negroes, changed the name by which they were known back to "train porters" and cut their pay nearly in half, without reducing or otherwise changing their duties (R. 24, 32, 145, 151, 285). It also designated one of the "train porters" General Chairman for the train porters and coerced the train porters one by one into individually ratifying the change of name and reduction in pay (R. 24, 34-35).

At that time the Negro "train porters" were unrepresented before management and had no organization. They later joined organizations for protection because they were

not admitted into the BRT (R. 86-87) and the BRT would not represent them (R. 41, 69, 75, 286).

The "train porter" does all the head-end braking work on his train, but white brakemen and train porters are never assigned to the same run at the same time (R. 131). However white "brakemen" and Negro "train porters" have been assigned interchangeably on the head-end of certain trains (R. 42). Taking off a train porter meant his replacement by a white brakeman (R. 154) to perform the same duties the train porter had been performing except cleaning up of cars and things of that nature (R. 131) which occupied only 5% of the train porter's time (R. 20).[5]

Certain Significant Findings

On December 21, 1945, BRT floated a strike ballot on the Frisco lines covering several unresolved disputes, which included:

> "Case No. 3. Complaint of Brotherhood of Railroad Trainmen against train porters being used to perform the duties of brakemen on passenger trains on all the lines of the SL-SF Railway Co. and SL-SF Tex. Railway Co.; and claim that additional brakemen covered by and paid under the respective brakemen agreement should be used to perform the duties of brakemen now being performed by train porters, and claim of brakemen dated August 2, 1945, be sustained" (R. 124-125).

The "Frisco" had previously rejected such demand on the ground "train porters are not doing anything now that they haven't done all these years" (R. 122, 130).

Pursuant to a request by the "Frisco" to the National Mediation Board, the President of the United States created an Emergency Board under the Railway Labor Act which held hearings in St. Louis January 11-18, 1946. The "train

[5] The cleaning duties are diminishing in importance because of vestibuled coaches, air-conditioning, sealed windows, and improvements in the habits of the traveling public (R. 134).

porters'' attempted to intervene and be heard but the Emergency Board refused permission to intervene or be heard (R. 213-215). The Emergency Board recommended that BRT and the ''Frisco'' submit cases 3 and 12 to the First Division of the National Railroad Adjustment Board (R. 216-219). The BRT refused and set a new date for withdrawal of its members from service (R. 128, 131, 220-221).

On March 7, 1946, under strike threat, the BRT exacted from the ''Frisco'' the following agreement (R. 221, 223):

> ''Effective April 1, 1946, the practice of train porters performing work generally recognized as brakemen's duties will be discontinued.''

Thereafter, *by way of giving effect to said agreement,* the Frisco served notice on the ''train porters'' that their positions were being discontinued effective April 1, 1946, and they were directed to turn in their switch keys and coach keys (R. 25, 45, 225).

Shortly after the notices were sent out to the ''train porters'' and before April 1, 1946, the Frisco caused bulletins to be posted advertising for ''brakemen'' on all the head-end braking jobs that the Negroes had previously been performing (R. 49, 50).

The ''train porters'' wired the President and Secretary-Treasurer of the BRT on March 19, 1946, asking representation and to join the BRT, and for the BRT to set aside the March 7, 1946, Agreement (R. 53-54). They received no answer. They also appealed unsuccessfully to the National Mediation Board March 19, 1946 (R. 245) and March 20, 1946 (R. 252, 254) and to First Division of the National Railroad Adjustment Board (R. 251) before appellant Howard filed the instant suit.

The trial court found specifically that the carriers made the agreement solely because of duress and strike threats (R. 279-280, 287); that at no time were the ''train porters'' represented during the negotiations (R. 129, 288); that the

"train porters" were performing their duties satisfactorily (R. 288); that the "Frisco" desired to retain the services of the train porters prior to the agreement of March 7, 1946, and decided to abolish the position of "train porter" solely because it was uneconomical to retain them if "train porters" could not perform the head-end braking duties (R. 128, 279-280, 288).

ARGUMENT

The Circuit Court of Appeals held that under the particular circumstances of this case the only lawful effect of the Agreement of March 7, 1946, was a merging of the "train porters" into the "brakemen", thus casting upon the BRT the obligation of protecting the minority group (the former "train porters") equally with its own membership, in accordance with the principles of *Steele* v. *L. & N. R. Co.*, 323 U. S. 192, 89 L. Ed. 173. It affirmed the decree of the District Court holding that the notices served on the "train porters" were in violation of the Railway Labor Act and ordered the BRT and the "Frisco" enjoined from using the said agreement for any purpose other than the merging of the two groups, but meticulously avoided any decision as to any rights, not related to the status created by the Agreement of March 7, 1946, the BRT might have for determination by the National Railroad Adjustment Board. Respondent contends that the decision of the Circuit Court of Appeals was right and that the Writ of Certiorari should be denied because:

I. The jurisdiction exercised by the Court of Appeals is consistent with the applicable decisions of this and other Federal Courts.

II. There is no "jurisdictional dispute".

III. Cases cited by petitioners are not in point.

IV. The decision is correct.

V. The Norris-LaGuardia Act is an inapplicable afterthought.

I. The Jurisdiction Exercised by the Court of Appeals is Consistent with the Applicable Decisions of This and Other Federal Courts

In this case respondent invoked the jurisdiction of the Court to enforce statutory and civil rights guaranteed to him and his class by the Railway Labor Act and the Constitution of the United States.

Under the Railway Labor Act Negro railroad workers have the rights to be represented fairly and impartially and to be free from employment contracts and practices that discriminate against them on the basis of race or color.

> *Steele* v. *L. & N. R. Co.*, 323 U. S. 192, 89 L. Ed. 173.
> *Brotherhood of Locomotive Firemen & Enginemen* v. *Tunstall*, 163 F. (2d) 289.
> *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, 94 L. Ed. 22.

The Railway Labor Act forbids railroad carriers from changing the working conditions of their employees without first giving thirty days notice of the change.

> 45 U. S. C., Section 156.

The right to work for a living in a common calling, free from artificial interference, is a fundamental constitutionally protected right.

> *Truax* v. *Raich*, 239 U. S. 33, 60 L. Ed. 131.

Inasmuch as the instant case was brought to protect the above-described federal statutory and civil rights which respondent alleged and proved were being violated and jeopardized by the actions of his collective bargaining representative under the Railway Labor Act and a railroad car-

rier, the Court below had, and properly exercised jurisdiction. That Federal Courts have jurisdiction of such causes of action is no longer open to question, for the decisions of this Court and other Federal Courts have clearly established their justiciability.

A suit to enforce the right to fair and impartial representation under the Railway Labor Act states a cause of action;

> *Steele* v. *L. & N. R. Co.*, supra.
> *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, supra.

and presents a federal question that the Courts of the United States have jurisdiction to hear and determine.

> *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210, 89 L. Ed. 187.

Obligations placed upon railroad carriers by the Railway Labor Act are enforceable in the Federal Courts.

> *Virginian R. Co.* v. *System Federation No. 40*, 300 U. S. 515, 81 L. Ed. 789.

This Court declared in *Traux* v. *Raich*, supra;

> "It requires no argument to show that the right to work for a living in the common occupations of the community is the very essence of the *personal freedom and opportunity* that it was the purpose of the Amendment to secure. (Citing Cases.) If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

In *Nord et al.* v. *Griffin*, 86 F. (2d) 481, 483, the United States Circuit Court of Appeals (7th Circuit) stated:

> "The right to earn a living and to continue in employment unmolested by efforts to enforce void enactments

or adjudications is entitled to protection, in the absence of an adequate remedy at law." (Citing *Truax* v. *Raich*, supra).

In exercising their jurisdiction over such controversies courts may consider the *effect* of collective bargaining agreements. This Court held in the *Steele* case, supra, that where such agreements are unlawful in terms or effect, Federal courts may act. In the *Graham* case, supra, this Court again passed upon the *effect* of a collective bargaining agreement negotiated by a labor union which discriminated against Negro firemen by denominating them as "non-promotable", while white firemen were "promotable" and found that "*the effect* of the agreements is to deprive them, solely because of their race, of rights and job assignments to which their seniority would entitled them." (Emphasis supplied.)

The Court took pains to restate, in the Graham case, l.c. 238, " . . . that the Statute which grants the majority exclusive representation for collective bargaining purposes, strips minorities within the craft of all powers of self-protection, for neither as groups or as individuals can they enter into bargaining with the employers on their own behalf. . . . And we held that abuse of its powers by perpetrating discriminatory employment practices based on racial considerations *gives rise to a cause of action under Federal Law, which Federal Courts will entertain and will remedy by injunction* . . . " (Emphasis supplied.)

In Brotherhood of Railroad Trainmen v. *Templeton*, 181 Fed. (2nd) 527 (8th Circuit) (Cert. denied 340 U. S. 823; rehearing denied 340 U. S. 885) the United States Court of Appeals had before it an action brought by "Messenger-baggagemen" against the Brotherhood of Railroad Trainmen to enjoin the enforcement of certain awards of the National Railroad Adjustment Board, and to have declared invalid certain letter agreements entered into between the Carriers (Atchison, Topeka and Santa Fe, and Panhandle

and Santa Fe Railroads) and the BRT. Among other things the Court upheld the conclusion of the trial court that it had jurisdiction to construe and determine the *legal effect* of the letter agreements, and upon a finding that said agreements are an application of illegal and void awards, it had the right to restrain and enjoin the enforcement or *"further carrying into effect of said agreements."*

On this question of jurisdiction it is also important to remember that the Court also had before it the question of whether the notices served on the "train porters" abolishing their positions were in violation of Section 6 of the Railway Labor Act, as amended. That question alone would have sustained the Court's jurisdiction because the giving of a thirty days notice of the change of rates of pay, rules and working conditions is a mandatory provision of the Railway Labor Act.

Cf. *Virginian Railway Co.* v. *System Federation, etc.*, 300 U. S. 515, 81 L. Ed. 789.

Even the trial court found that it had jurisdiction of this aspect of the case. It is a well-established principle of federal law that where a court has acquired rightful jurisdiction of the parties and subject matter it will retain it for all purposes within the general scope of the equities to be enforced.

Ober v. *Gallagher*, 93 U. S. 199, 23 L. Ed. 829.
Cromwell v. *Benson*, 285 U. S. 22, 76 L. Ed. 598.

It would indeed be a sad commentary on Justice if a Court of Equity would have to defer the granting of relief when irreparable injury to statutory and fundamental rights is claimed as a result of a railroad labor agreement until a non-judicial body some two or three years later, might tell what the *legal effect* was of the agreement. Such requirement would be tantamount to a sacrifice or obliteration of the rights involved.

II. There Is No "Jurisdictional Dispute"

As will be seen from a reading of its opinion (based on the particular facts and their analysis, with the legal situation resulting therefrom, l.c. 447, 448) the Court of Appeals saw through the strategy of the BRT in trying to produce for its members from the agreement advantages for as long a period as possible by seeking "to becloud the plain legal situation to which the agreement of itself gives rise, as set out above, by asserting in effect that the brakemen have other rights, outside and beyond those created by the exacted agreement . . . , and that this claim of rights should prompt a court of equity to ignore the results which it is undertaking to make the agreement produce . . . in other words the Brotherhood asks that, for a period of 2 to 2½ years . . . it be allowed to inflict upon the trainporters whatever consequences it is able to do, through the exacted agreement, by loosely calling the entire situation in its unrelated aspects, a jurisdictional dispute."

From a reading of the petition filed herein it is obvious that petitioner's main argument in this court for the allowance of the Writ of Certiorari is that the Circuit Court of Appeals exceeded its jurisdiction and decided a cause that should have been referred to the National Railroad Adjustment Board. It is equally obvious that they reach that conclusion by disregarding the basic facts and *assuming* that the cause constitutes a "jurisdictional dispute" between representatives of separate crafts as to which craft should perform the head-end braking functions on the "Frisco's" trains. Having made that assumption (See page 2 of the Petition herein under "Questions Presented"), petitioners then proceed to argue that the decisions of this Court precluded the Circuit Court of Appeals from deciding that assumed jurisdictional dispute. Respondent respectfully submits that since petitioner's premise is based upon an unsupported assumption their conclusion is likewise unsupported and without merit.

As the record shows, the facts in this case clearly disprove the existence of any dispute between a representative of the "train porters" and a representative of "brakemen", as to who should perform the head-end braking functions on the "Frisco". All parties concede that the work in question belongs to the brakemen's craft. This essential difference between the instant case and the ordinary "jurisdictional dispute" was clearly recognized by the Court below. After reviewing the facts of the instant case, it stated:

> "From the recitation preceding, it will be noted that the agreement does not involve, as in the ordinary situation of jurisdictional dispute, an attempted shift in some mere incident of work as between two continued classes of positions or in some mere segment of individual jobs as between two preserved crafts of employees. The agreement reached out to take over, by forced action, without regard to basis, the entire positional field of another craft, with the industrially inevitable, and so legally intended, result that the 40-year established and recognized separate craft would be pushed off the railway and cease to have existence."
>
> • • • • • • • •
>
> "Further repeating, the only right which the Railway recognized in the brakemen to occupy the train porters' field, in both its dealings and contractual consummation, was whatever the agreement itself had created. And the Railway's action in abolishing the position of train porter and terminating the employment of those holding that position was taken solely to make possible the creation and effectuation in the brakemen of such a right of occupancy as an obligation imposed upon it by the exacted agreement. *No dispute has ever existed or now exists between the Railway and the train porters as to the latter's right to continue to occupy their positional field, if the agreement in its making or its consequence, is invalid, so that the Brotherhood and its members would not be entitled to claim any exclusionary right on the basis of it.*" (Emphasis supplied.)

And further:

> "There is no contention by the train porters here that a merger of the two previous similar positions and crafts, with a proper recognition of the train porters' existing status and rights, could not validly be made to occur, through an agreement on the part of the Railway with the Brotherhood, such as is here involved. And in so far as the making of such a merger agreement might perhaps otherwise require previous notice by the Railway to the train porters of an intention to make, in order to give it validity under the Railway Labor Act, if such an objection were raised, the train porters do not undertake to interpose any such objection to the validity of the agreement as effecting a mere merger of the two positions and crafts. *They are willing that the agreement be allowed to have the normal legal effect of which it would be capable, of having assimilated their positional field and themselves into the brakeman's craft.* Also, they recognize that the Brotherhood is entitled to the status of bargaining representative for the merged crafts, by reason of the majorityship in number of its previous membership." (Emphasis supplied.)

When the Court of Appeals decreed the only lawful effect of the agreement of March 7, 1946, to be a merger of the trainporters into the brakemen, thus casting upon the BRT thenceforth (irrespective of its previous rights and obligations) the duty of protecting the minority group on an equal basis with its own membership, it was mindful of the "extraneous" issues which the BRT characterize as a "jurisdictional dispute", and was meticulous in defining the scope of the decree to be entered in order to preserve such alleged extraneous rights. In other words, the Court held that it was not necessary for it to consider any matter relating to any alleged jurisdictional disputes which might have existed prior to the Agreement of March 7, 1946; that irrespective of any rights that the BRT might have had prior to that agreement, no jurisdictional dispute between crafts

could exist after March 7, 1946, *because there was only one craft involved,* and that these other "nonrelated" claims could not deprive a Court of equity of jurisdiction to protect rights inuring to respondent and his class as a result of the agreement. Such a holding is in all respects consistent with reason and the decisions of this Court and when the BRT pitched its argument upon an assumed jurisdictional dispute which the Court found to be irrelevant it merely built the familiar straw man and then proceeded to knock him down.

III. Cases Cited by Petitioners Are Not In Point

The distinction between the facts upon which the court in this case based its decision and the cases relied upon by the petitioners is clearly established by the records in the cases cited.

In *General Committee, B. of L. E.* v. *Missouri,* K. T. R. Co., 320 U. S. 323, 88 L. Ed. 76, this Court held that a dispute between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen as to which organization was the proper bargaining representative under the Railway Labor Act for the purpose of legislating with respect to the calling of emergency engineers, was non-justiciable because it required a determination of a matter referable to the National Mediation Board and did not involve a right created by Congress which was intended to be enforceable in the courts.

Order of Railway Conductors v. *Pitney,* 326 U. S. 561, 90 L. Ed. 318, involved the question as to what extent a Federal District Court having charge of a railroad reorganization has power to adjudicate a jurisdictional dispute involving the railroad and two accredited bargaining representatives under the Railway Labor Act, *where each union was claiming that its collective bargaining agreement* entitled it to supply certain conductors. This Court held that the in-

terpretation of the agreements was a matter for the National Railroad Adjustment Board.

In *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 561, 94 L. Ed. 795, the railroad company was seeking a declaratory judgment in a dispute between two unions *concerning the scope of their respective agreements*, each claiming for its members certain jobs in the carrier yards at Elmira, New York.

In *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 88 L. Ed. 61, this court held that courts are without jurisdiction to review a determination of the National Mediation Board as to whether a specified group of the carrier's employees were entitled to choose a separate representative.

Elgin, Joliet & Eastern Railway Co. v. *Burley*, 325 U. S. 711, 89 L. Ed. 1886, involved the question as to whether a collective bargaining agreement could be effective to deprive railroad employees of individual rights reserved to them with respect to grievances.

Missouri-Kansas-Texas R. Co. v *Randolph*, (8th Cir), 164 F. (2d) 4, cited by petitioners in a footnote at page 7 of their petition is clearly distinguishable from the instant case.

In that case two collective bargaining representatives were contending for the same work, *each claiming that its respective collective bargaining agreement* entitled its members to the work. The Court held on those facts that a jurisdictional dispute existed. Contrasting those facts with the facts of the instant case, *where there is no dispute between representatives and the work involved is admittedly brakemen's work*, the distinction between the two cases becomes immediately apparent and supports the different results reached by the same Court.

Nothing contained in any of the above decisions conflicts with the holding of the court below, which reserved to the BRT its right to seek an administrative interpretation of

its collective bargaining agreement as to any claims which it might have had prior to the consolidation of the groups.

IV. The Decision Is Correct

Respondent submits that the decision of the Circuit Court of Appeals is founded on reason and established law and that the result reached is correct and protects the rights of all parties. There was ample factual bases to justify the result reached and the decision could well have been to the same effect for other and additional reasons. In fact, the Court of Appeals was mindful that it could have ruled on the merits in favor of the respondent herein because of a violation "of the fundamental right of the train porters not to be made to lose their jobs and employment through artificial interference on the part of the Brotherhood or anyone else. *Truax* v. *Raich*, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131" l.c. 446.

Another case that the Court could have relied on, if the decision below had turned on the interference with the fundamental right to work, is that of *Dorchy* v. *Kansas*, 272 U. S. 306, 311. There, this Court held that a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. Also see *James* v. *Marinship Corporation*, 25 Cal. (2d) 721, 155 P. (2d) 329.

There are limits on means employed in collective bargaining.

Bautista v. *Jones*, 155 P. (2d) 343, 25 Cal. (2d) 746.

The threat of a strike can only be used properly in connection with legitimate objectives of collective bargaining.

Again, the Court of Appeals, in a footnote, numbered 4, l.c. 445, pointedly implies that the decision could very well have turned on the race question alone, but since the trial court did not reach a consideration of that factual question, "and the case is being disposed of here on a legal basis that

would be controlling, regardless of what race might be involved, we need not further discuss the contention".

A substantial basis on which the Court could also have ruled against petitioners, amply supported by facts in the record, is that irrespective of the racial badge of "train porter" which distinguished Negro head-end brakemen from white men who were referred to as "brakemen", they were nevertheless of the same craft, *even prior to the Agreement of March 7, 1946.*

Regardless of the reason assigned the result is correct, and it is well established that where the result is correct the decision of a lower tribunal will not be disturbed even if a wrong reason is assigned therefor.

J. E. Reilly Investment Co. v. *C. I. R.*, 311 U. S. 55, 59, 85 L. Ed. 36, 40.

V. The Norris-LaGuardia Act Is an Inapplicable Afterthought

Petitioners urge in this Court for the first time that the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Section 101, et seq., deprives the Federal Court of jurisdiction toward the injunctive relief granted by the Court below. Respondent submits that such a proposition is not only incompatible with the purpose of the Act but also flies in the face of controlling decisions of this Court. This Act constituted a great advancement for the cause of labor, but it would be a pyrrhic victory indeed if it should be construed to deprive employees of an injunctive remedy to avert irreparable injury caused by the violation of other rights conferred upon them by subsequent labor legislation. That no such anamolous construction should be indulged in is plain in principle and has been so declared by this Court.

Respondent has alleged that the Brotherhood and the Railroad had violated mandatory duties imposed upon them by the Railway Labor Act. In the case of *Virginian Railway Co.*, supra, this Court held that the Norris-LaGuar-

dia Act does not apply to an injunction to enforce such rights, and that the mandatory provisions of the Railway Labor Act " . . . cannot be rendered nugatory by the earlier and more general provisions of the Norris LaGuardia Act." (300 U. S. 515 at 563). In *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, supra, the union, as here, attempted to avoid the full effects of the *Steele* and *Tunstall* decisions, supra, by contending, as they do now, that the Norris-LaGuardia Act operates to restrain federal courts from issuing injunctions to enforce the obligation to represent all members of the craft fairly. However, this Court, in clear and unmistakable language, expressly held the provisions of the Norris-LaGuardia Act inapplicable to a suit for injunctive relief against discriminatory representation by the statutory bargaining agent. The following excerpt is particularly pertinent to the instant case:

> "Nor does the Norris-LaGuardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If in spite of the Virginian, Steele and Tunstall Cases (US) all supra, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. The District Court has jurisdiction to enforce by injunction petitioners' rights to non-discriminatory representation by their statutory representative." 338. U.S. 232 at 239.

Also see: *Brotherhood of Railroad Trainmen* v. *Templeton*, supra.

Hunter v. *Atchison, Topeka & Santa Fe Ry. Co.*, 171 F. (2d) 594, 596.

We submit that the foregoing decisions clearly demonstrate that the Norris-LaGuardia Act is not applicable to this suit.

CONCLUSION

It should be apparent from a reading of the Opinion of the Court of Appeals, and from the annotations of the Record in the Statement of Facts herein that petitioners have misconceived the basis for the Court's ruling. This Court has already gone on record in numerous cases that the Railroad Brotherhoods are not beyond the reach of the Law, and that they cannot through subterfuge or by the unbridled use of their economic strength deprive relatively helpless minorities of fundamental rights, and that racial hostility, no matter how artfully manifested by a statutory bargaining agent, will not receive the protection of the courts.

Respectfully submitted,

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